

# Iowa Criminal and Juvenile Justice Plan

## *1997 Update*

Multi-Year Goals

Sentencing Reform

Incarceration Rate of African-Americans

Domestic Violence

Prison Population Forecast

Juvenile Crime & Responses to Violent Youth

Runaways

**CJJP** Division of Criminal & Juvenile Justice Planning  
Iowa Department of Human Rights

February, 1997

## **Iowa Criminal and Juvenile Justice Plan -- 1997 Update**

### **ABOUT THIS REPORT**

Pursuant to Iowa Code 216A, subchapter 9, CJJP is required to issue an annual report containing long-range system goals, special issue planning recommendations and research findings. CJJP's 1997 response to its reporting requirement is different from past years. Rather than issuing one large document containing many separate reports, single-issue 1997 Update reports now are being made available based on reader interest and need. It is hoped this approach to disseminating CJJP research and planning reports will be more cost effective and more responsive to the planning activities and information needs of Iowa's policy makers, justice system officials and others.

**On the cover of this document is a listing of various topics that are the subjects of separate CJJP reports issued in February, 1997. To receive other 1997 reports, please contact CJJP as indicated below.**

Through the oversight of both the Iowa Juvenile Justice Advisory Council and the Iowa Criminal and Juvenile Justice Planning Advisory Council, CJJP staff are engaged in a variety of research, data analysis, program and policy planning and grant administration activities. Annually, these two advisory councils review long-range justice system goals and identify current issues of concern to be addressed through CJJP's research and planning activities.

**Reports on the issues listed below are being issued through CJJP's 1997 Update and are the result of the planning activities of the Iowa Criminal and Juvenile Justice Planning Advisory Council (CJJ PAC) and the Iowa Juvenile Justice Advisory Council (JJAC).**

- **Multi-Year Goals\*\***
- **Sentencing Reform\***
- **Incarceration Rate of African Americans\***
- **Domestic Violence\***
- **Prison Population Forecast**
- **Juvenile Crime & Responses to Violent Youth**
- **Runaways\*\***

Note: Single asterisked reports include recommendations developed and approved by the CJJPAC. Double asterisked reports include recommendations developed and approved by the CJJPAC and the JJAC.

A number of CJJP staff were involved in the research and writing of the reports being issued through this 1997 Update. Primary authorship or significant contributions were as follows:

Richard Moore: CJJP Administrator

Clarence Key, Jr.: “Sentencing Reform”  
                           “Incarceration Rate of African Americans”  
                           “Domestic Violence”

Dave Kuker:         “Runaways”  
                           “Juvenile Crime and Responses to Violent Youth”

Lettie Prell:         “Sentencing Reform”  
                           “Prison Population Forecast”  
                           “Juvenile Crime and Responses to Violent Youth”

Laura Roeder:       “Prison Population Forecast”  
                           “Juvenile Crime and Responses to Violent Youth”

**TO RECEIVE ADDITIONAL CJJP 1997 UPDATE REPORTS**

Reports on the issues listed on the previous page can be obtained by contacting CJJP:

Division of Criminal & Juvenile Justice Planning	
Iowa Department of Human Rights	Phone: 515-242-5823
Lucas State Office Building	Fax: 515-242-6119
Des Moines, Iowa 50319	email: <a href="mailto:cjjp@max.state.ia.us">cjjp@max.state.ia.us</a>

**AVAILABILITY OF RELATED REPORTS:**

Several reports were prepared to assist CJJP complete their 1997 Update reports. They contain much information not included in CJJP’s 1997 Update materials. To receive copies of the below listed reports, contact CJJP as described above.

- “A Survey of Juvenile & Criminal Justice Personnel: Services for Runaways and Serious Violent Juvenile Offenders,” Michael J. Leiber, University of Northern Iowa, 1996.
- “Summary Report -- Preliminary Findings from the Midwest Homeless and Runaway Adolescent Project,” Les B. Whitbeck, Iowa State University, 1996.
- “Responding to Runaways in Iowa: A Discussion of Relevant Laws and Services,” Dave Kuker, CJJP, 1996.

## **STUDY ISSUE: SENTENCING REFORM**

### **STATEMENT OF THE PROBLEM**

In July 1990, the Correctional Policy Project was established under the auspices of the Criminal and Juvenile Justice Planning Advisory Council. The first priority of the Council for this project was to study the desirability and feasibility of changing Iowa's sentencing practices.

Research and analysis by CJJP in complying with this priority identified intermediate sanctions as a criminal justice system sentencing tool that could be utilized to enhance and improve sentencing options for judges and to better manage non-compliant offender behavior.

With the establishment of the Intermediate Criminal Sanctions Task Force in 1992 and two progress reports to the Legislature and Governor, a corrections continuum was defined in statute during the 1996 legislative session.

Among the recommendations made by the Task Force in its first legislative report was for the establishment of an interim study committee to consider a plan to undertake a comprehensive review of the criminal code. A legislative interim study committee was convened in the fall of 1994 to consider the feasibility of a criminal code revision. The committee determined at that time that sentencing practices did not require comprehensive restructuring. As a result, a criminal code revision was not pursued.

In reference to sentencing since the inception of the Correctional Policy Project, Iowa's criminal justice system has seen its prison inmate population increase by about 61% within the past six years. In 1990 the inmate population was approximately 3,800 inmates. Today Iowa has over 6,200 inmates incarcerated in our prison system.

Prison admissions have steadily increased within that six year period which has contributed to overcrowding of our prison system. To address the overcrowding problem, Iowa authorized the construction of three new prisons. The institution in Clarinda is now open, the expansion in Newton is nearing completion and the prison slated for Fort Dodge will soon be under construction. The prospect of construction of a fourth prison has been discussed by the Legislature and the Governor. There has been no final decision as to whether another prison should be constructed.

Over the past six years policy and decisionmakers have taken aggressive steps to reduce crime by passing new crime legislation. The creation of more restrictive criminal penalties for a wide array of offenses (primarily drug and violent offenses), along with current policies such as mandatory minimum sentences, longer lengths of stay in prison for offenders, and increased probation revocations, has led to prison population growth, overcrowding and the recent surge in prison construction.

Community based corrections (CBC's) have also seen significant growth in their probation and parole caseloads.

Given the many criminal sentencing changes and the rapid growth of the corrections population it seems reasonable again to consider whether a comprehensive restructuring of our sentencing laws is warranted. For example, below are several areas within our current sentencing system where a criminal code revision could impact:

- Increased complexity of sentencing laws and practices. Iowa's current penalties were originally ordered by offense class; that is, for every "class" or category of offense, there was one maximum penalty. However, there are now numerous exceptions to offense class penalties, such as the many ways in which sentences for certain drug crimes may be enhanced. Additionally, exceptions to standard procedures exist. For example, drunken drivers sentenced to prison often are not actually sent there, but are diverted to community-based facilities.
- Decrease in judicial and parole board discretion. By design, Iowa's indeterminate sentencing structure relies on exercise of judicial discretion at the time of sentencing, and the exercise of parole board discretion to set prisoners' lengths of stay. The increase of mandatory sentences, mandatory minimum terms and the abolishment of parole for certain crimes has significantly affected this discretion and decreased system officials' abilities to respond to case-specific characteristics and situations.
- Increased disparity in sentences relative to the seriousness of the offense and when compared with other offenses. A major guiding principle of the sentencing system is that offenses of similar severity should be assigned similar penalties. The extent to which Iowa's current laws follow this principle is currently questionable. For example, Burglary-1st degree and Robbery-1st degree are both Class B felonies, meaning that these offenses are considered to be of similar severity. However, the maximum penalty for Burglary -1st degree is a prison term not to exceed 25 years, which may be reduced to about 12 years for good behavior, with release earlier if the parole board deems it appropriate. Offenders convicted of Robbery-1st degree must serve nearly twice as long as the burglar's sentence adjusted for "good time"--21.2 years in prison--and there is no possibility for parole.

- The existence of irregularities in Iowa's sentencing structure. Most offenders in Iowa receive indeterminate sentences, while others receive determinate sentences of a length originally designed to be indeterminate. Iowa has passed "Truth-in-Sentencing" laws which is determinate sentencing, a system in which sentence maximums are designed to be close to what the offender will actually serve. Determinate sentences in other states are generally much shorter than indeterminate sentences. However, Iowa's determinate sentences were crafted from the old indeterminate terms. Indeterminate sentences are not designed to be close to what the offender will actually serve, but according to what the absolute maximum penalty should be, which few offenders actually serve (indeterminate sentences rely on extensive use of "good time" and parole board discretion to set appropriate lengths of stay).
- Lack of sentencing options for murderers. There is now little difference in penalties between Murder-1st degree and Murder-2nd degree (1st degree is life without parole; 2nd degree is 42.5 years with no possibility of parole). There is a concern that some cases of murder (those for whom something less than 42 years in prison is deemed appropriate) will be plea-bargained to the next possible offense, voluntary manslaughter, which a person would normally serve in full in only five years.

It should be noted that while a previous legislative interim study committee declined to conduct a comprehensive study for a criminal code revision, the 1996 legislature passed and the Governor signed into law Senate File 2114 which establishes a sentencing task force. CJJP is named as a participating member of this task force. It appears that policy and decisionmakers continue to discuss Iowa's sentencing system.

## **FINDINGS: INTERVIEWS WITH OFFICIALS**

CJJP staff visited with a number of key officials in 1996 regarding whether sentencing reform in Iowa is necessary at this time, as well as related issues. Those interviewed included state and local officials representing a wide range of views, both political parties and various justice system agencies.

There is currently no consensus that a comprehensive restructuring of Iowa sentencing laws is necessary at this time. Some officials told CJJP that there is an immediate need for change. Some of these officials supported comprehensive reform (e.g., re-ranking offenses according to severity, rethinking penalties, and/or designing a determinate sentencing system). Others felt that incremental adjustments would adequately address their concerns.

Other officials, however, felt that Iowa's sentencing laws are in fairly good shape and not currently heading in a bad direction. Most officials holding this position favored incremental adjustments to current laws.

Some officials supported maintaining Iowa's indeterminate sentencing system. Others favored changing to a determinate sentencing system.

## INDETERMINATE SENTENCING

Under indeterminate sentencing, the judge specifies only the maximum sentence length of a prison term imposed and a release authority later determines how long the offender will serve. Officials' comments with regard to this type of sentencing system were as follows:

### Pros

1. The most dangerous offenders can be held longer.
2. There are incentives for offenders (extensive "good time" and possibility of earlier release).
3. Parole board has more information than the judge, so can better determine length of stay.
4. Victim input is considered in making release decisions.
5. Parole board can address sentencing disparity.

### Cons

1. It "deceives" the public and victims by imposing long terms that are rarely served in full.
2. Prisoners know "the system", and have an idea how long they will be expected to serve.

## DETERMINATE SENTENCING

Under determinate sentencing, an offender sentenced to prison will serve a term close to what the judge imposes. There is no discretionary parole release. Officials' comments with regard to this type of sentencing system were as follows:

### Pros

1. Its goal is uniformity in sentencing and prisoner time served, which is important.
2. Offenders, victims and the public know how long offenders will serve.
3. Provides protection against arbitrary decisions

### Cons

1. Prosecutors cannot always control sentencing situations to achieve fairness.
2. Information at sentencing is often lacking, inhibiting determination of a just sentence.
3. There is little incentive for prisoners to behave or participate in rehabilitative programs.

## VIOLENT CRIME INITIATIVE

Recent legislation established determinate sentences for certain offenses (abolishing parole and requiring offenders to serve 85% of the maximum term). Some officials, including a few who favored indeterminate sentencing, supported this change. Others disfavored the change, including some who advocated moving to a determinate sentencing system. In discussing their support or nonsupport of this policy, officials offered the following comments:

### Those Supporting Policy

1. The goal was to lengthen sentences, not create competing sentencing systems (officials expressed willingness to look at lowering or adjusting the determinate lengths).
2. The impact on prisons was considered. The policy was limited to a few crimes, and is considered affordable.
3. Provides a real certainty that violent and dangerous offenders are removed from the community for a long time.

### Those Not Supporting Policy

1. We should have the same sentencing system (indeterminate or determinate) for all offenders.
2. It is a mistake to craft determinate sentences based on indeterminate terms (too long). Consider the amounts of time prisoners have historically served when setting determinate terms.
3. It is important to craft determinate sentence ranges based on criminal history as well as offense severity.
4. The impact on prison populations needs to be addressed.
5. Will result in the needless incarceration of people who do not pose a significant risk to the public.

## GOOD TIME (SENTENCE REDUCTION)

Senate File 2114 not only provided determinate sentences for certain forcible felonies, it also reduced the amount of “good time” an offender could acquire if convicted of certain forcible felonies. Such offenders would only receive a 15% reduction in “good time” of their maximum sentence, whereas generally inmates receive one day of good time for each day of good behavior while incarcerated or roughly a 50% reduction of their maximum sentence. Additional “good time” earnings may be acquired for inmate participation in work and/or educational programs.

When asked if this disparity in the application of “good time” warranted administrative review or further modification in the manner in which good time is distributed, policy and decisionmakers interviewed generally indicated there was no need to seek equitable application. It should be noted however, that several officials indicated that “good time” should not be provided to inmates at the beginning of their term in prison as is currently done, but that it should be earned and accumulated as their behavior warrants. “Good time” is viewed by justice system professionals as a very necessary institutional inmate behavioral tool and its elimination would be detrimental.

## SENTENCING POLICIES AND THEIR EFFECT ON PRISON SECURITY

CJJP also interviewed labor officials and representatives of Iowa's correctional employees. They indicated record numbers of monthly prison admissions and inmates serving more time on their criminal sentences has led to prison overcrowding and an increase of correctional officer assaults by inmates.

Labor officials and representatives reported that each of Iowa's prisons are in need of more staff to provide and ensure a safe workplace for employees and a secure environment for the inmates. Further, labor reports that it has no qualms with the recent spate of legislation that has contributed to the overcrowding; they indicate it needs more staff and are hopeful to receive more resources that will provide for more correctional officers.

## SENTENCING GUIDELINES

From those interviewed, concerns were raised over the decline in the amount of judicial discretion in recent years. Several officials suggested that sentencing guidelines could be developed in a way that would restore the court's ability to decide all cases on their particular circumstances, and that would accomplish sentencing uniformity and the provision of sanctions that are appropriate to the seriousness of the offense and the offender. Suggestions included establishing a sentencing commission to accomplish this. Others noted that there was a need for flexibility in the guidelines with a perhaps a mechanism for appellate review.

## INTERMEDIATE CRIMINAL SANCTIONS

For the past several years alternative sentencing options have been supported by criminal justice practitioners, policy and decisionmakers.

Among the new legislation passed by the 1996 General Assembly was the definition of a corrections continuum. The continuum is a sentencing tool consisting of community-based and correctional sanctions grouped and ranked from the least restrictive sanction to the most restrictive. It is designed to provide an informational tool for judges as well as for community-based corrections officials as they respond to offender non-compliant behavior. This corrections continuum is a product that was developed as a result of the work of the Intermediate Criminal Sanctions Task Force. The legislation provides for the voluntary participation of the eight district departments of correctional services to develop their own plans for the implementation of the corrections continuum in their area.

When asked about the viability of its use, those interviewed reported favorable support for its utilization. However, some were unaware of its existence, yet felt it could be a valuable asset because it provides for an array of options for judges and community-based corrections officials.

## RESTORATIVE JUSTICE

Restorative justice or community justice programs have begun to be implemented in various areas across the state. This justice tool seeks not to punish for punishment's sake but to right the wrong, to repair the damage to the extent possible, and restore both the victim and by extension the community after a criminal act has been committed. Restitution and community service are two common forms of restorative justice. In addition, another form that is utilized is victim mediation with offenders to discuss the impact of their crime, the effect their criminal act has had on their lives, and to seek reparation. The restorative justice concept is being utilized in various judicial districts (2nd and 5th).

Policy and decisionmakers interviewed expressed interest in expanding the use of this justice tool as another effort to strengthen the criminal justice system. They cited that it provides for more involvement and knowledge of the criminal justice system by victims, and the process under which it operates. They noted that some county attorneys also favor the victim input in the decision process of determining an appropriate sentence for the offender.

## **CONCLUSION**

While it appears that there was not a consensus among our interviewees as to whether the criminal code is in need of a complete overhaul, there did appear to be an interest in discussing and addressing the issues presented above.

## **RECOMMENDATIONS:**

- 1. The Council recommends that the state's district departments of correctional services develop the intermediate criminal sanctions plans as provided for in Section 901A.1. The Council recommends the judicial department participates in the development of the districts intermediate criminal sanctions plan. The Council also recommends that the department of corrections and the legislature develop funding and other policy incentives to encourage the development of intermediate criminal sanctions plans.**
- 2. The Council recommends that restorative justice sanctions be expanded within community-based corrections and other appropriate settings.**

3. Although no consensus was reached by those interviewed, this Council strongly recommends that justice system officials and legislators begin a comprehensive restructuring of Iowa's sentencing laws. This restructure should take into consideration the following concerns and potential benefits:
- a) Increased complexity of sentencing laws and practices.
  - b) Decreased judicial and parole board discretion.
  - c) Increased disparity in sentences relative to the seriousness of certain offense and when compared with other offenses.
  - d) Irregularities in Iowa's sentencing structure.
  - e) Lack of sentencing options for murderers.
  - f) Potential benefits of sentencing guidelines to enhance and blend judicial discretion, sentencing uniformity, and the provision of sanctions that are appropriate to the seriousness of the offense and the offender.
  - g) Potential benefits of restorative justice principles as they apply to sentencing.
  - h) Potential benefits of establishing a commission which will be responsible for the ongoing examination and planning of Iowa's sentencing policies and practices.
4. The Council recommends that no more changes in Iowa's sentencing laws be done that further alter Iowa's basic indeterminate sentencing system, except as part of a comprehensive restructuring of sentencing laws.
5. The Council recommends no further reduction in statutory "good time" allowances except as part of a comprehensive restructuring of sentencing laws. Any efforts to adjust "good time" need to take into account the changes it may have on the ability to manage the offender population, and the safety of prison employees.